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C O N F I D E N T I A L SECTION 01 OF 03 BRUSSELS 000743

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SUBJECT: GUANTANAMO: S/E FRIED AND EU COUNTERPARTS DISCUSS
JOINT POSITION ON DETAINEES

REF: BRUSSELS 681

Classified By: USEU POL M-C Chris Davis for reasons 1.4 (b) (d)

¶1. (C/NF) Summary: Special Envoy for Guantanamo Closure (S/GC) Daniel Fried met with EU counterparts on May 19 in Brussels. EU officials expressed optimism that wording of the U.S.-EU joint statement on resettlement of Guantanamo detainees in EU member states will be agreed to in time for approval by the June 18 European Council (in conjunction with the EU internal position on the same). They believed that its roll-out would help calm the political debate in the United States and in the EU on the closing of the detention center and according security concerns. The recent return to France of former detainee Boumediene, according to the EU interlocutors, was not seen as in discord with EU planning, but rather done in anticipation of reaching the internal position. Acknowledging the political difficulties, EU interlocutors nonetheless said the U.S. needed to take primary responsibility for closing Guantanamo by receiving detainees itself; however, they are willing to work towards language to satisfy both U.S. and EU concerns on that issue.

¶2. (C/NF) The Political and Security Committee will discuss the language of the U.S.-EU joint statement. Separately, EU interlocutors mentioned that they will soon transmit a letter to AG Holder and SecDef Gates spelling out eight EU principles on detention policy. The revitalization of the military tribunals, troubling to the Europeans, was explained as necessary for cases which cannot be adjudicated in Article III courts. Discussing the details of the EU draft of the joint statement, S/E Fried said specific wording on U.S. responsibility to accept detainees and on the degree of information sharing will need to be studied in Washington, then discussed via DVC on May 27. End Summary

Barroso Cabinet: Joint EU-U.S. Position on Track,
Information Sharing to Follow

¶3. (C/NF) To discuss the "enabling environment" permitting some EU member states to accept Guantanamo detainees, S/E Daniel Fried, L/PM Stephen Pomper, S/GC Michael Williams, and USEU Pol M-C met May 19 in Brussels with Commission President Barroso's Cabinet Director Joao Vale de Almeida, European Commission Justice, Freedom and Security Director General Jonathan Faull and his assistant Telmo Baltazar, and External Relations unit chief Luigi

Soreca. S/E Fried said a joint U.S.-EU position by June could potentially influence positively the domestic U.S. debate on detainees, adding that the U.S. draft had full interagency clearances. Almeida responded that Commission President Barroso is very supportive of closing Guantanamo and that Almeida's deadline for a joint U.S.-EU position is June 15. Faull said the deadline would be met, despite some loose ends in the Czech EU presidency, and that even Sweden wants the internal position and joint statement in place before its EU presidency begins July 1. The U.S. and EU texts were already quite similar, Faull added, and the follow-on meeting (see below, paras 7-16) could delve into the wording.

¶4. (C/NF) Luigi Soreca said the mechanism for the exchange of information within the EU regarding specific detainees was close to being finalized. S/E Fried noted that the USG's objective is for individual EU member states to receive substantially the same information as U.S. decision-makers used in making their decisions on the detainees, and that receiving countries could then request further information and clarification through intelligence channels as needed. From his own reading of some of the files prepared by the Guantanamo task force, S/E Fried said a complete picture of the each detainee emerges and that member states should find these files useful and adequate. A key objective, said Faull, is to arm Interior Ministers with enough information on detainees so that they can tell skeptical legislatures, "We have received full disclosure." He said the Austrian Interior Minister had been difficult on intelligence sharing, but Austria has accepted the principle of an EU umbrella, aided by the precedent case of

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the Palestinians and the Church of the Nativity. Almeida added that Barroso would see the Austrian chancellor the following week, and S/E Fried expressed his willingness to go to Vienna as well. As for reported difficulties with Germany, Faull said he had confidence that Interior Minister Schauble would ultimately decline to block the EU internal position, despite his reservations.

¶5. (C/NF) On the transfer to France the previous week of Guantanamo detainee Boumedienne, Faull said France was "anticipating, not obstructing" the formulation of a U.S.-EU joint position. Soreca said France had informed COREPER prior to the transfer, adding that the Boumedienne case "confirms" the EU framework approach.

¶6. (C/NF) Moving towards one of the more pressing concerns, Jonathan Faull said the EU wanted a "credible answer" to what the U.S. is doing itself to accept detainees, which, he added, could affect the drafting of the joint statement. Acknowledging S/E Fried's characterization of the current debate in the United States, Faull said the European public would be slow to believe that President Obama could already have a political problem with this issue. Nonetheless, Faull said, that the EU would work with the US to find suitable language for the joint statement. Almeida concluded, "We are happy with the way things are moving."

Details Discussed with Counter-Terrorism Coordinator

¶7. (SBU) Immediately after meeting with the Cabinet of European Commission President Barroso, S/E Fried and the delegation, joined by USEU Justice Counselor M.L. Warren, met with EU Counter-Terrorism Coordinator Gilles de Kerchove and his staff Tim Jones and Christiane Hoehn, and the Czech Presidency Permanent Representation First Secretary Juraj Fogada. Jonathan Faull, Telmo Baltazar and Luigi Soreca also joined.

¶8. (C/NF) De Kerchove began by conceding that the EU still needed to persuade one remaining Member State

(meaning Germany) to agree to the proposed U.S.-EU joint statement in part because of that State's concerns that a joint statement would compel member states to receive detainees. De Kerchove said the language of the proposed statement would calm member states' fears that the statement would be a vehicle for the EU somehow to oblige them to accept detainees. S/E Fried noted that after his recent private consultations in Germany about possible Guantanamo resettlements, the Germans had immediately made the talks public, beginning a painful public debate on the issue. All agreed that the German reaction was for the most part a function of internal politics and upcoming election maneuvering.

¶9. (C) De Kerchove said the May 19 Political and Security Council would discuss (i) the overall roadmap for reaching the EU internal position, (ii) the proposed U.S.-EU joint statement, (iii) the EU draft letter to AG Holder and SecDef Gates outlining the eight principles the EU saw as fundamental to the U.S.'s ongoing review in the Detention Policy Task Force, and (iv) the intention to launch a process later in the autumn to deepen the U.S.-EU legal and policy dialogue in the security area, the so-called "Bellinger Dialogue." De Kerchove and Faull noted that although they might be able to gain the agreement of COREPER at an earlier date, the joint statement would have a June 14th deadline for decision to allow for a ministerial blessing at the EU Council's General Affairs meeting on June 19. They noted the expected and ongoing "tussle" between Foreign Ministers, who tended to be more receptive, with Justice and Home Affairs Ministers, who tended to be more reticent about accepting detainees for resettlement.

¶10. (C) De Kerchove remarked that President Obama's recent announcement that the USG would revive military commissions posed additional difficulties on the EU side. The timing of the announcement was explained as necessary because of the expiration of the 120-day stay of some of the detainee cases in the military commissions. S/E Fried said that the military commissions would be significantly reformed in order to provide additional due process safeguards that might be even further expanded as the Administration worked with Congress. S/E Fried noted that for those detainees determined as prosecution candidates,

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the USG will use its Article III (federal) courts where feasible, but that for certain cases military commissions may be appropriate, and the USG wishes to preserve that option.

¶11. (SBU) Dr. Hoehn of the De Kerchove's office explained what had been done in the EU's redraft of the latest U.S. version of the proposed joint statement. In a number of places it was close to and in some cases exactly the text the USG had provided. The EU text was divided into two parts: (1) the closing of Guantanamo, and (2) US-EU counterterrorism and other cooperation beyond that effort. The information sharing provisions in the Guantanamo-related part of the text were redrafted in line with the Council's conclusions on how the information exchange mechanism would work. De Kerchove said that it was also important to highlight that Guantanamo is first a U.S. problem and to note the U.S.'s responsibility to accept some of the detainees for resettlement on U.S. soil - both concepts that were reflected in the EU draft. Faull agreed, adding the EU was helping, but did not have the responsibility of solving this problem.

¶13. (C/NF) De Kerchove stressed that the two major sticking points to obtaining support from Germany and the Czech EU Presidency are (i) acknowledging that Guantanamo closure is first a U.S. problem requiring U.S. solutions, including acceptance by the USG of at least some detainees for resettlement in its own territory; and (ii) the

availability and amount of information a non-receiving Member State would have access to when another Member State receives detainees for resettlement.

¶14. (C) Other concerns raised by S/E Fried and others from the U.S. delegation included statements referencing detainees as "cleared for release," which was not a categorization necessarily used by the USG; that the USG would give "consideration to paying compensation to the detainees," which is not something the USG would agree to as formulated; and the statement that it is the responsibility of the United States to accept detainees into its own territory. S/E Fried highlighted the last statement and a bullet from the EU Council summary of conclusions regarding the amount of, and extent to which information would be shared as serious issues that needed further discussion in Washington.

¶15. (C/NF) The discussion proceeded to the roll-out of the joint statement - its timing and who would issue it. S/E Fried said that the USG was looking toward June for the announcement once the EU internal position was concluded, but would have to consult with Washington as to the question of who might issue it. De Kerchove and Faull said it should be issued at a very high-level to accord the appropriate political weight to the document for both U.S. and European publics. The EU has also not decided who will issue the Joint Statement on its behalf; however, de Kerchove raised the possibility of the current Czech Prime Minister, Commission President Barroso, and Commission Vice-President Barrot.

¶16. (C) Both sides agreed that the next discussion on the joint statement would be by DVC on Wednesday, May 27, 2009. The objective for both sides is to have a completed text; i.e., through the necessary reviews by both of our systems, by the end of May - beginning of June.

¶17. (U) This message has been cleared by Special Envoy Fried.

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